The respondent objected at the preliminary hearing that such service was improper.

Held: (1) s. 42 of the Criminal Procedure Code applies only to the service of Summons and does not apply in this case; (2) the notice was properly served and the preliminary objection should have been overruled.

MAGISTRATE'S APPEAL.

A. V. Winslow (Crown Counsel) for the appellant.

K. Gould for the respondent.

Cur. Adv. Vult.

Murray-Aynsley, C.J. : — This is a short point raising the question of what is meant by the words "served on" in section 32(b) of the Road Traffic Ordinance, 1941. By this section persons prosecuted for offences under certain parts of the Ordinance have a privilege denied to other accused persons in that it is necessary to serve a summons within 14 days or within the same period, with certain exceptions, to serve or send by registered post a notice giving particulars of the offence for which the person concerned is to be prosecuted.

In the present case the person charged was a member of the armed forces and the notice was sent by registered post to an officer of the R.A.F. Police and handed to the defendant personally by a corporal of the R.A.F. Police. This seems to be the practice adopted by the Police and the authorities of the R.A.F.

Unless any special form of service is required I think that this would undoubtedly be good service. Primarily service means handing a document to the person concerned and unless the law requires that it must be served by some special person it can be done by any agent, as is usually the case in England.

The Criminal Procedure Code section 42 requires that a summons must normally be served by police officer, that is a member of the civil Police. But this is not a summons and I think section 42 has no application

I consider that the notice was properly served and that the preliminary objection should have been overruled. The case is remitted to the Court below to be heard on its merits.

Order accordingly.

Solicitors for the respondent: *Rodyk & Davidson.*

K. ABDUL GAFFOOR v. REGINA.

[A. Cr. J. (Murray-Aynsley, C.J.) March 31, 1954]

[Singapore — Magistrate's Appeal No. 73 of 1954]

Mercantile Law — Trade Marks Ordinance, 1938, s. 2 — Counterfeit — Whether date at which labels were made is material — Subsequent date of registration of label as trade mark.

The appellant was convicted of having in his possession goods bearing a counterfeit trade mark. His only defence was that the offending labels used by him were not counterfeit as such labels were made long before the registration of the complainants' mark. S. 2 of the Trade Marks Ordinance, 1938, states that in order to counterfeit a trade mark there must be a trade mark in existence which is a registered mark.

Held: a label which is not counterfeit when made cannot become counterfeit through the subsequent registration of a trade mark by someone else.

MAGISTRATE'S APPEAL.

M. W. Maxwell for the appellant.

Lee Kuan Yew for the respondent.

Cur. Adv. Vult.

Murray-Aynsley, C.J. : — In this case the appellant was convicted of having in his possession on 3rd December 1952 goods bearing a counterfeit trade mark.

It was proved that on that date the appellant was attempting to export tins of pineapple bearing a label which was a colourable imitation of a label used by the complainants and which had been registered as a trade mark since April 1, 1947. The labels used by the appellant bore the name of Sin Heng & Co., a firm which went bankrupt, it seems, in 1941. The only defence of the appellant was that the labels were not counterfeit within the meaning of section 12 of Cap. 157. For a definition of "counterfeit" one must look to section 10 which deals with the offence of counterfeiting. To counterfeit a trade mark there must be a trade mark in existence which by section 2 means (since the passing of the Trade Marks Ordinance No. 38 of 1938) a registered mark. Section 12 imposes penalties for using counterfeit marks as defined in section 10. By section 10 a counterfeit mark must be "so made" i.e. in imitation of a registered mark. The appellant contended that as a matter of of fact the offending labels were made before the registration of the complainants' mark in 1947. The appellant said that in September 1947 he purchased the labels in question from one Tan Kwong Soon who had been one of the partners in the bankrupt firm of Sin Heng. This Tan Kwong Soon was not called but the Court was invited to infer that this label was one of those which belonged to the bankrupt firm in 1941. The learned District Judge considered the date at which a label is made to be immaterial. I do not agree with this. I do not think that a label which is not counterfeit when made can become counterfeit through the subsequent registration of a trade mark by

someone else. He did not therefore make a finding of fact as to the date when the offending labels were made.

I think a new trial must be ordered.

New trial ordered.

Solicitors for the appellant: *Sisson & Delay.*

Solicitors for the respondent: *Laycock & Ong.*

INDO-AUSTRALIAN TRADING CO. LTD. v. PNG LIM CHUA.

[A. C. J. (Murray-Aynsley, C.J.) June 22, 1954]

[Singapore — District Court Appeal No. 13 of 1954]

Landlord and tenant — Control of Rent Ordinance, 1953, s. 15(1)(i) — Claim for possession — Meaning of "temporary character" as applied to buildings.

The word "temporary" as applied to buildings has no precise meaning. Usually it refers to the purposes for which a building is erected. The expression "temporary character" referred to in s. 15(1)(i) is very much a question of degree. The fact that the building in question has lasted 27 years and is still inhabited is evidence that the building is not of "temporary character."

DISTRICT COURT APPEAL.

L. A. J. Smith for the appellants.

Ong Swee Keng for the respondent.

Cur. Adv. Vult.

Murray-Aynsley, C.J.: — This appeal raises the question of the meaning of the word "temporary" in para. (i) of section 15(1) of the Control of Rent Ordinance (No. 22 of 1953). The learned District Judge has found as a fact that the buildings in question were not of a "temporary character". The word "temporary" as applied to buildings has no precise meaning. Usually it refers to the purpose for which a building is erected, e.g. buildings erected for an exhibition. Here we have to consider the expression "temporary character". It is very much a question of degree; no building lasts for ever unless continually repaired. All buildings soon become uneconomic as we know from reading appeals for the preservation of cathedrals and other historic buildings.

There is evidence that the buildings in question had lasted up to 27 years and were still inhabited. I cannot, in the circumstances, say that the learned District Judge had no evidence to support his finding.

It was suggested at the hearing that the learned District Judge might have ordered possession as against the respondent of certain premises which had been sub-let. The point was not taken in the Court below nor until counsel for the appellants applied to amend at the hearing was it mentioned in the memorandum of appeal. I do not think that I ought to consider it now. I am doubtful in any event whether the English cases would apply here.

The appeal must be dismissed with costs.

Appeal dismissed.

Solicitors for the appellants: *Donaldson & Burkinshaw.*

Solicitors for the defendant: *L. Rayner & Co.*

LEE GEE CHONG v. LOKE'S MEDICAL HALL LTD.

[O. C. J. (Murray-Aynsley, C.J.) June 22, 1954]

[Singapore — Originating Motion No. 11 of 1954]

Landlord and tenant — Control of Rent Ordinance, 1953, s. 9(1)(b) — Construction of — Meaning of "just and proper" — Where tenants consent given.

In this Rent Board Application the tenant had consented to an increase of rent asked for by the landlord by reason of s. 7(1)(e) and s. 9(1)(b) of the Control of Rent Ordinance 1953. The Board allowed the increase under s. 7(1)(e) but refused to sanction the increase under s. 9(1)(b) on the ground that there was nothing special in the facts of this case to justify a departure from the principles set out by Taylor J. in **In re Application by Laycock & Ong.**[1]

Held: the whole object of s. 9(1)(b) is to give discretion to the Board to fix rents at a figure (subject to the proviso) which seems to them just and proper apart altogether from the question of what is the standard rent. Where a rent has been agreed between people particularly business people, as the result of free bargain, the fact that they have so agreed is relevant in deciding what is just and proper.

Case referred to:—

(1) *In re Application by Laycock & Ong* (1954) M.L.J. 41.

APPLICATION.

S. H. D. Elias for the plaintiff.

Omar bin Salleh for the defendant.

Cur. Adv. Vult.

Murray-Aynsley, C.J.: — These are proceedings under section 13(1) of Ordinance No. 22 of 1953. The only ground on which the Court can interfere is that the decision of the Board is wrong in law. This Court is not a Court of Appeal so far as the Rent Board is concerned.

The proceedings were taken before the Board under section 9(1)(b). By that part of the Ordinance the Board has power, subject to a proviso, to fix rent at such figure as "to the Board may seem just and proper." Unless the Board gives reasons bad in law when it fixes the rent of premises the Court has no